IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 252 of 1998
with
INCOME TAX APPLICATION No 255 of 1998
with
INCOME TAX APPLICATION No 260 of 1998
with
INCOME TAX APPLICATION NO 263 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed

to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution

of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

COMMISSIONER OF INCOME TAX

Versus

MAYANK ROTOPLAST INDUSTRIES

Appearance:
MR MANISH R BHATT for Petitioner
MR SN SOPARKAR for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 25/11/98

ORAL JUDGEMENT (per R. Balia, J.)

In all the 4 cases, the application under sec. 256(2) has been made in identical circumstances. A survey was conducted at the business place of the assessee during the previous year relevant to the Assessment Year in question. The assessee had initially filed a return declaring a loss. After the survey was conducted the assessee filed a revised return disclosing income and claimed benefit of Amnesty Scheme which was then brought into effect by a circular issued by the Central Board of Direct Taxes. The Assessing Officer did not allow the benefit of Amnesty Scheme by holding that the filing of return after a survey was conducted was not voluntary and suo motu filing of revised return and therefore made regular assessment giving no benefit of Amnesty Scheme. On appeal, C.I.T. (Appeals) confirmed the order of the Assessing Officer. The Tribunal, on further appeal, set aside the order by following its decision rendered in the case of Vikas Sales Corporation, Surat v. Income Tax Officer, Surat, I.T.A. No. 3421 & 3422/90 in which it had held as under:-

"ITA No. 3422/Ahd/90 relates to A.Y. 1986-87. In this case also the assessee filed its return of income under the Amnesty Scheme on 30th September, 1986 declaring income of Rs. 6,87,460/- and tax due according to the return of income was paid by way of advance tax and self assessment tax. The Asstt. Director of Inspection had conducted action under sec. 133A of the Act on 23rd September, 1986 in the assessee's case, however, nothing was seized nor any incriminating material was found. The assessee had also co-operated in its enquiry relating to assessment of its income. The A.O. charged interests of Rs. 3,145/- under sec. 139(8) and Rs. 8,525/- under sec. 217 of the Act. The A.O.. also initiated penalty proceedings under sec. 273(2)(aa) of the Act. The assessee held not entitled to the benefits of the Amnesty Scheme on the ground that the return of income was filed after the survey operations conducted by the Department. The A.O. held that had there been no survey operations, the assessee would not have come forward with disclosure.

In the instant case also, there is no allegation that the disclosure made in the return of income was not full and true. There is also no findings that disclosure was not in good faith. During the course of survey operations nothing incriminating was found against the assessee. It is pertinent to note that the facts in this appeal are identical to the facts in ITA No. 3421/Ahd/90

relating to A.Y. 1985-86 (supra). For the reasons stated in the order in ITA No. 3421/Ahd/90, this appeal too is allowed. Consequently the interest charged under sec. 139(8) and sec. 217 of the Act will also have to be cancelled."

The Revenue has not challenged the result in ITA Nos. 3421 and 3422 of 1990.

In the present cases the Tribunal found that there is no allegation that the disclosure made in the returns were not full and true. There are no allegations that disclosure made were not in good faith. During the survey operations conducted by the revenue authorities nothing incriminating was found and detected.

On this ground and referring to the circular of the Central Board of Direct Taxes making it clear that the assessee could make good with the assessment of income which is not the subject-matter of appeal provided the same has not been found out in the course of search. On finding that nothing incriminating has been found against the assessee during the course of survey and otherwise finding that the returns filed were true and correct and in good faith and not as a result of detection, held that the assessee was entitled to benefit of Amnesty Scheme. Accordingly, it set aside the orders emanating from the rejection of assessee's claim to benefit under the Amnesty Scheme. In the aforesaid circumstances, the following question was required by the Commissioner to be referred to this court for its opinion.

"Whether, on the facts and in the circumstances of the case, the tribunal was right in law in holding that filing of revised return prompted by survey u/s 133-A of I.T. Act would be a return filed prior to detection by the Department and thereby eligible to benefit of Amnesty Scheme?"

It is noticed that the decision in the present case is founded on Tribunal's own decision in ITA No. 3421/90 relating to Vikas Sales Corporation, Surat, which has not been made subject of any reference application.

The Tribunal rejected the application under sec. 256(1), hence the Commissioner has moved this application under sec. 256(2) requiring the direction to the Tribunal for referring the above question of law said to be arising out of Tribunal's order.

Having heard learned counsel for the parties, we are satisfied that there is no error in the order of the Tribunal refusing to refer the aforesaid question under sec. 256(1) of the Act. The Revenue's case has been that a return filed after survey of the business premises of an assessee is a return on detection of concealment and cannot be treated as voluntary disclosure of income. The Tribunal has found as a fact that nothing incriminating has been found against the assessee during the course of detection. The question whether a detection has been made as a result of survey is a question of fact.

It is obvious that mere conduct of survey or for that matter even search at any premises by itself cannot give any ground to hold that assessee has not disclosed anything or is guilty of non-disclosure. Whether assessee is found to be in possession of anything which can indicate about non-disclosure of income on his part is a question of ultimate conclusion reached by the competent officer concerned with such proceedings. Answer to question of law whether a return filed by an assessee after a survey has been conducted is involuntary and in pursuance of detection of material incriminating the assessee is obvious and in the negative. Whether as a result of any proceedings the A.O. has detected something incriminating and thereupon the assessee has filed a return is always a question of fact. If the question is referable to abstract question that conducting of survey itself is sufficient to brand a return as involuntary and on detection of any material non-disclosure on the part of the assessee the answer being obvious, the question is not required to be referred. The tribunal has not reached and could not have reached any such conclusion that in no case a return filed after conduct of survey but before any search can ever by involuntary return. In fact it has assumed that such can be the case, but the proceedings must disclose that during survey something incriminating has been found against the assessee and that has led to filing of return. This part of the controversy is a question of fact which has been found in favour of assessee and against the revenue on considering material before it. This later part does not give rise to question of law which may be required to be referred except in case a question is raised about vitiating such findings on such ground that renders the finding reached by tribunal open to interference.

Without expressing any opinion even if it be assumed for the sake of argument that a return filed

after conduct of survey can give rise to a presumption that assessee has filed returns after detection, it at best is a rebuttable presumption of fact which can be upturned during the course of proceedings. What amount of evidence would be necessary for rebutting the presumption arising out of such survey is a matter in the realm of sufficiency or adequacy of evidence necessary for reaching a conclusion of fact. It does not give rise to a question of law.

The Tribunal in each of the cases has found that during the course of survey no incriminating material has been found and there are no allegations against full and true disclosure or good faith on the part of assessee . These are all findings of fact. If the Tribunal has reached its findings of fact by taking into consideration the fact of survey that no detection has been found, in our opinion, no question of law arises as suggested by the Revenue in these applications.

The applications are therefore rejected. Notices are discharged. There shall be no order as to costs.

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